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[ORIGINAL CIVIL JURISDICTION].

TERRELL, J.

July 6, 1938.

IN RE THE ESTATE OF JACOB MANASSEH MEYER DECEASED.

R. MEYER(W) & ANOR. v. K. MEYER (an infant)

[SINGAPORE ORIGINATING SUMMONS No. 52 of 1938].

Jewish law—Ketouba—Necessary evidence of foreign law.

On the occasion of the marriage in Singapore of two Jews a marriage document in the Hebrew language called "ketouba" was prepared and signed by the bride and bridegroom and witnesses. Some years later the bridegroom died.

Held, that if the "Ketouba" was meant to be effective it required stamping as on a settlement and in the absence of stamping it was inadmissible in evidence.

Also held, that the principles applicable to the meaning and effect of the "Ketouba" must be stated as a matter of foreign law which could only be decided by evidence adduced for the purpose in the particular case before the Court.

ORIGINATING SUMMONS.

E. R. Koek for the Plaintiffs.

Dr. Withers Payne for the Defendant.

J. C. Cobbelt for Rebecca Meyer.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

TERRELL, J.—Upon the marriage of Rebecca David and Jacob Manasseh Meyer on the 2nd November 1924 a marriage document in the Hebrew language called a "Ketouba" was prepared and signed by certain witnesses, and also by the bridegroom. Jacob Manasseh Meyer died intestate on the 27th December 1934 domiciled in Singapore. His estate was sworn at over $1,400,000. The intestate's estate passed on his death as to one-third to the widow and as to two-thirds to the daughter of the marriage, Kitty Meyer, who is the respondent on the Originating Summons.

The terms of the ketouba were as follows:—

> "On this day, Sunday the 5th Heshwan in the year 5685 from Creation, according to the Jewish calendar, (corresponding to the 2nd day of November 1924) in the Port of Singapore, according to the instructions and sanction of our Rabbis.
>
> "In the presence of the undersigned witnesses the Bridegroom Jacob Manasseh Meyer has declared to the Bride Rebecca Messooda, daughter of Brook David Menahem Esquire, 'you hereby become my wife according to the laws of Moses and Israel, and by the help of God I will work for you, feed you and clothe you and supply your needs according to the custom of Jewish husbands who work for their wives, feed them and clothe them in order to maintain them faithfully and loyally. And I hereby undertake to give you the Mohar of your maidenhood, viz. 200 Milhkal in pure silver (equivalent to about twenty-five dollars) to which you are entitled according to the Torah, for which I make myself liable to pay you from my possessions. And furthermore I am liable to maintain you in food, clothing and all other necesssaries and to associate with you according to the usage of mankind. And the said Bride has agreed to become my wife on the said terms and conditions.'
>
> "And the said Bridegroom has undertaken to pay $555 over and above the 200 Milhkal in silver.
>
> "And the said Bride has contributed from her father's house as her dowry jewellery, clothing and cash to the extent of $25,000.
>
> "And the said Bridegroom has hereby undertaken to pay the Bride a sum of $55,555 made up of 4 items viz. $25,000, $15,000, $15,000 and $555 in local currency, in addition to 200 Milhkal in pure silver (equivalent to about twenty-five dollars in local currency) in the realm of our Sovereign King George V whom God preserve.
>
> "And the said Bridegroom agrees to all the said terms and conditions, exactly as though the above mentioned amounts of money have come to his hand and are under his control, and he has accordingly become liable for the total of these several sums of money.
>
> "And in the presence of the undermentioned witnesses the said Bridegroom declares 'I am liable to the fulfilment of this agreement and all its terms and conditions, both myself my heirs and executors; And the Bride is entitled to re-imburse herself from the choicest of my possessions, goods cash or real estate or anything else that I possess under the Heavens, that I possess in the present or that I may possess in the future.

"'And all my possessions goods cash and properties are at her disposal for the payment of the said liabilities of the various items mentioned above, whether in my lifetime or after my death.'

"And we the undermentioned witnesses have accepted this declaration on oath from the Bridegroom, an oath being binding and true. And we have placed in his hands an appropriate article upon which to take an oath, in order to abide by this agreement loyally and faithfully, in the name of the Creator who knows the working of the heart.

"And to our knowledge he has sworn truthfully. The oath has been taken by the Bridegroom for the purpose of fulfilling the above conditions, without any 'arriere pensee', notwithstanding any other oaths or statements he may have made in the presence of other witnesses.

"And this agreement is entered into according to the guidance and authority of our Rabbi Shlomo Bar Adaireth.

"And this Ketouba is binding absolutely and is not to be considered like other prescribed printed documents, and is according to the established laws and instructions of our Rabbis and Teachers on whom be Peace.

"And all the above statements are true and hold good for ever.

"witness—Signed by D. J. Elias — Jacob Manasseh Meyer Bridegroom

Ezra Meir Hazan

„ —Joseph Levy — Officiating Priest."

It is stated on affidavit that the bride's father shortly after the marriage contributed the sum of $25,000 which was invested in the purchase of a house in Singapore in the bride's name, but it is common ground that the sums covenanted to be paid by the bridegroom were never paid, and when the applicants, the administrators, filed their affidavit with the Commissioner of Estate Duties, the widow appeared as a creditor by virtue of the ketouba for the abovementioned sum of $55,555.

It is to be observed that the ketouba was never stamped.

The questions raised by the Originating Summons are:—

(1) whether upon the true construction of the ketouba the sum of $55,555 or any other sum is payable out of the estate of the intestate; and

(2) whether the applicants as administrators are at liberty to pay such sum to the said Rebecca Meyer.

At the hearing counsel for the infant respondent submitted that no liability arose by virtue of the ketouba for the following reasons:--

(1) The ketouba was not intended to have any legal effect.

(2) If it was so intended there was no consideration.

(3) In any case any claim by the widow has been satisfied by the share which she has received out of the intestate's estate.

The last point presents little difficulty. The case of *Salisbury* v. *Salisbury*, 67 E.R. p.1272, is an authority for the proposition that when a husband had covenanted to settle a certain sum on his wife in consideration of marriage and died intestate without having performed his covenants, the share which his wife received from his estate on the intestacy cannot be regarded as satisfaction of the covenant.

As regards the second point, it is argued that there was no consideration moving from Rebecca David to support the promise by the bridegroom to pay the sum of $55,555, and that the only consideration for this promise was the contribution by the bride's father. This argument can only succeed if the Court is satisfied that the promise is divisible. There are cases such as *Wood* v. *Benson*, (1831) 1 L.J. Ex. p.18, where the Court has so held, but the general rule is well stated by Bramwell, B. in *Harris* v. *Venables*, L.R. 7 Ex. p.235 at p.240, where he says:—

> "You are not bound to repeat the consideration throughout the contract; all that is to be done on the one side is the consideration for all that is to be done on the other—all the promises are referred to all the considerations."

In the present case the considerations for the bridegroom's undertaking to settle the sum of $55,555 are the marriage and the bringing in of $25,000 from the bride's father. The ketouba is one document, whole and indivisible, and I consider it would be a forced construction to find that the bride's marriage had nothing to do with the bridegroom's settlement.

I find, therefore, that the argument, based on the absence of any consideration moving from the bride, fails.

The first point presents greater difficulties.

In construing marriage contracts the general rule is that laid down by *Dicey*, Conflict of laws 5th Edition, at p. 762:

> "The marriage contract or settlement will be construed with reference to the proper law of the contract, i.e. in the absence of reason to the contrary, with reference to the law of the matrimonial domicil."

This rule has to be modified in the Straits Settlements in the case of persons of alien race and alien customs. It is not necessary for me to consider whether such modification is due to the provisions of the Charter of 1855 or to the principle of comity favoured by Sir Benson Maxwell in *Regina* v. *Williams*, 3 Kyshe, p. 16. There is ground for saying that both principles have at different times been upheld by the Privy Council (see *Braddell*, Laws of Straits Settlements Vol. 1, p. 79). As regards the point now before the Court, the principle is clearly stated by Sir Benson Maxwell in *Chulas and anor.* v. *Kolson*, Leicester, p. 462, in the following terms:—

> "The question how far the general rules of the laws of England are applicable to races having religious and social institutions differing from our own is of occasional occurrence in this Court and is seldom free from difficulty. It has been repeatedly laid down as the doctrine of our law that its rules are not applicable to such races when intolerable injustice and oppression would be the consequences of their application."

The learned Judge then deals with matters of criminal law, instancing the absurdity of punishing a Mohammedan for bigamy. He proceeds:— "If the criminal law may be made to bend in this manner to the exigencies of natural justice, the civil law must be at least as flexible, and where our law is wholly unsuited to the conditions of the alien races living under it, their laws and usages must be applied to them on the same principles and with the same limitations as foreign law is applied by our courts to foreigners and foreign transactions. They must be regarded as persons having foreign domiciles and governed for many purposes by this law, and as if they were residing amongst us temporarily."

With this statement of the law I respectfully agree, and it follows that the principles applicable to the construction of the meaning and effect of the ketouba must be treated as a matter of foreign law.

In the case of the Jews there is a difficulty in ascertaining with any exactitude what the law is. As Crump, J. has pointed out in *Benjamin* v. *Benjamin*, A.I.R. 1926 Bombay p. 169 at p. 175:—

> "At the outset a difficulty arises owing to the uncertain state of that (the Jewish) law which is due in a measure to historical causes. The subjugation of Judea in the reign of the Emperor Vespasian brought about the political annihilation of the Jewish nation. From that date no Jewish State has existed, and there has been no government based on Jewish law which could secure uniformity of practice, and bring about the removal of that which has become obsolete. The Jews are now widely dispersed, and while the principles of modern Judaism have modified many provisions of the Rabbinical Code in order to make them conform to the requirements of the laws of the countries in which the Jews live, the more conservative Jews regard all the norms of the Rabbinical Code as ever binding and unchangeable. The Jews in Bombay come mainly from Baghdad, and it is improbable that they regard the Jewish Law in precisely the same light as the Jews living in England or in America. It is plain that the custom of the community must be considered on points where there is room for doubt."

In the two cases cited before me, *Benjamin* v. *Benjamin* 1926 A.I.R. Bombay p. 169, and *Joshua* v. *Arakie*, I.L.R. 38 Calcutta p. 708 and on appeal I.L.R. 40 Calcutta p. 266, considerable *viva voce* evidence was given as to the custom of Jews in Bombay and Calcutta. The Court was also referred to books of authority written by recognized experts in Jewish Law. In both these cases the Court decided that the particular ketouba which was in evidence before them was not a real transaction and that it was not intended to be acted upon.

The custom of the Jews in Singapore may or may not be the same as that of the Jews in Calcutta and Bombay, but even if there were no objections in law to this Court accepting evidence of foreign law given in a different case, it would clearly be extremely dangerous to do so. I need only give one instance. *Joshua* v. *Arakie*, I.L.R. 38 Calcutta at p. 713, the following passage occurs in the judgment of Harington, J.:—

> "There is evidence that the Ketouba gives a right enforceable by an innocent wife when she is divorced by her husband, but the evidence in this case does not, to my mind, establish that she has any rights under it against her deceased husband's estate."

On the other hand, Ezra Meir, Hazan of the Chesed El Synagogue, Singapore, has sworn on affidavit that the purpose of the ketuoba is to make provision for the wife in the event of her becoming *widowed* or divorced. If this statement is correct, there is evidently a divergence

between the Jewish custom in Calcutta and that in Singapore. But apart from that, questions of foreign law, (and for reasons stated above I regard this as a question of foreign law) can only be decided by evidence adduced for the purpose in the particular case before the Court. As Scrutton, L.J. said in *Deutsche Bank* v. *Banque des Marchands de Moscou*, 107 Law Journal at p. 389: "I am disposed to accept the view taken by a two-Judge Court of Appeal in *McCormick* v. *Garnett* (5 De G.M. & G. p. 278) that the Court cannot take note in one case of foreign law which has been proved in another case as a fact, but that it should require the foreign law to be proved again in the case then before it." Still less can it take note of foreign law proved in a different jurisdiction.

The only evidence of Jewish law or custom is the affidavit of Ezra Meir above referred to and which was filed on the 28th April 1938 and a further affidavit filed on the 15th June 1938. No doubt the deponent is an expert, but he did not give his evidence *viva voce* and was not cross-examined. In the result the Court was left in doubt as to many matters which might have been elucidated. In particular evidence might have been called as to the difference, if any, between the laws and customs prevailing among the Jews in Bombay and Calcutta and those prevailing in Singapore. It is also to be remembered that in the ketouba before the Court some of the provisions, for instance, the settlement of $25,000 by the bride's father, were actually carried into effect, whereas in the ketoubas which were the subjects of the Indian decisions none of the provisions appears to have been carried out. I have also referred above to the question whether a ketouba is intended to be effective on divorce only and not on intestacy and to the evidence given in *Joshua* v. *Arakie*, I.L.R. 38 Calc. p. 713 on this point. The Court cannot be expected to decide such difficult questions of fact upon the very scanty evidence placed before it.

It is, however, clear that if the ketouba was intended to be effective it required stamping as a settlement, and in the absence of stamping, is inadmissible in evidence under the provisions of section 52 of the Stamp Ordinance, (Cap. 228). Proviso (a) to that section provides that the instrument may be admitted in evidence on payment of the proper duty and penalty payable under section 47.

I think, therefore, that Rebecca Meyer should be at liberty, if she is so advised, to have the ketouba stamped and apply within one month to have the summons reheard and be at liberty to produce further evidence in support of her claim, such evidence being *viva voce*.

If no such application is made the Court will declare that the administrators are not at liberty to pay to the said Rebecca Meyer the sum of $55,555. It follows that a corrective affidavit will have to be filed for the Commissioner of Stamps.

Order accordingly.

Solicitors for the Plaintiff—*Chan & Eber.*
Solicitors for the Defendants—
Drew & Napier.

Solicitors for Rebecca Meyer—
Rodyk & Davidson.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

July 8, 1938.

IN RE THE ESTATE DUTY ORDINANCE, S. 36. *IN RE* THE ESTATE OF WYNFREDA JENNIE DUNBAR HOGG DECEASED.

[SINGAPORE ORIGINATING PETITION No. 2 of 1938]

Estate Duty—Private limited Company—Valuation of Shares on death of shareholder.

In valuing shares in a private limited company subject to restrictions on transfer, for the purpose of paying estate duty thereon, where a winding up was not contemplated at the death or compellable by a purchaser or purchasers of the shares of the deceased, the value of the shares must not be estimated on the basis of a hypothetical winding up at the date of the death, but must be estimated to be the price which in the opinion of the Commissioner of Estate Duties the shares would fetch if sold in the open market at the time of the death of the deceased. This must be to a certain extent a fictitious basis of valuation as shares which are subject to a restriction on transfer cannot be sold in the open market. The Court however is permitted to make the assumption that any purchaser can be put on the register. Subject to that all the rights and liabilities incident to the shares must be taken in consideration.

Commissioners of Inland Revenue v. *Crossman and others*, (1937) A.C. 26 followed.

ORIGINATING PETITION.

K. K. O'Connor, for the Petitioner.

N. A. Worley, Solicitor-General, for the Commissioner of Estate Duties.

Cur. Ad. Vult.

TERRELL, J.—This Petition involves the question, what is the proper valuation for estate duty purposes to place on 833 A shares of $100 each in the Singapore & General Investment Company (hereinafter called "the Company.") The shares in question formed part of the estate of Wynfreda Jeannie Dunbar Hogg deceased who died on the 15th November 1936, and the value of the shares must be ascertained as on that date.